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1 UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF OHIO  
3 - - -  
4 EASTSIDE LINCOLN MERCURY, ET AL, )  
5 )  
6 PLAINTIFFS, )  
7 )  
8 VS ) CASE NO: 01CV00567  
9 )  
10 FORD MOTOR COMPANY, ET AL, )  
11 )  
12 DEFENDANTS. )  
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DEPOSITION OF: JERRY L. MULLINS  
CINCINNATI, OHIO  
APRIL 2, 2003

REPORTER: JILL M. DRAGON SANDY  
Dragon Reporting Service  
5551 Seville Court  
Cincinnati, Ohio 45247  
(513)574-8319

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1 The deposition of JERRY L. MULLINS, taken on  
2 discovery, pursuant to agreement of counsel as to time and  
3 place, in the offices of Rendigs, Fry, Kiely & Dennis, Suite  
4 900, One West Fourth Street, Cincinnati, Ohio, on April 2,  
5 2003, at 12:45 PM, upon oral examination, and to be used in  
6 accordance with the Ohio Rules of Civil Procedure.

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10 S T I P U L A T I O N S

11 It is stipulated by and between counsel for the  
12 representative parties that the deposition of JERRY L.  
13 MULLINS, the witness herein, may be taken at this time and  
14 place pursuant to the Ohio Rules of Civil Procedure,  
15 pursuant to agreement of counsel as to time and place; that  
16 the proof of the notary is waived; that the deposition may  
17 be recorded in stenotypy by the notary public, Jill M.  
18 Dragon Sandy, who is also the court reporter, and  
19 transcribed out of the presence of the witness, and that the  
20 deposition is required to be submitted to the witness for  
21 his examination and signature.

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1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFFS:

4 Mr. Gregory J. Berberich  
and

5 Mr. Lawrence A. Flemer  
Statman, Harris, Siegel & Eyrich

6 2900 Chemed Center  
255 East Fifth Street

7 Cincinnati, Ohio 45202  
(513)621-2666

8

9

10 FOR THE DEFENDANTS:

11 Mr. Steven D. Hengehold  
Rendigs, Fry, Kiely & Dennis  
12 Suite 900

One West Fourth Street  
13 Cincinnati, Ohio 45202-3688  
(513)381-9221

14

15 Mr. Gregory Smith  
Baker & Hostetler  
16 Capitol Square, Suite 2100  
65 East State Street  
17 Columbus, Ohio 43215-4260  
(614)462-2651

18

19 ALSO PRESENT:

20 Mr. James Woodall

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I N D E X

CROSS-EXAMINATION BY:

MR. FLEMER

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E X H I B I T I N D E X

(None)

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1 JERRY L. MULLINS,  
2 called on behalf of the plaintiff, after having been  
3 first duly sworn, was examined and deposed as follows:

4 C R O S S - E X A M I N A T I O N

5 BY MR. FLEMER:

6 Q. Mr. Mullins, my name is Larry Flemer,  
7 and I represent the plaintiffs in the lawsuit that brings us  
8 here together.  
9 I'm going to be asking you a series of  
10 questions today that relate to what knowledge you have about  
11 some of the issues.

12 Have you ever had your deposition taken  
13 before?

14 A. Yes.

15 Q. Okay. Just as a brief review, the  
16 process works best when you remember to give a verbal answer  
17 to all the questions, as opposed to shaking your head. Try  
18 to refrain from "huh-uhs" and "uh-huhs". Those are kind of  
19 ambiguous and not always taken down clearly by our court  
20 reporter.

21 If you don't understand one of my  
22 questions or any of the phrasing that I use, just let me  
23 know and I'll restate it. It's important that you and I  
24 understand each other in this process. But only you know if  
25 you understand my question, so hopefully you can let me know

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1 if there is problem and I'll rephrase. Okay?

2 A. Yes.

3 Q. Okay. If you need to take a break at  
4 some time, just let us know and we'll accommodate you.

5 And I guess the other thing is try to  
6 remember to let me finish my question before you start your  
7 answer, and I'll do the same for you when you answer.

8 A. Okay.

9 Q. All right. Would you state your full  
10 name and give me your current residence address?

11 A. Jerry Lee Mullins, 6187 Dry Ridge Road,  
12 Cincinnati, Ohio.

13 Q. And what's the zip?

14 A. 45252.

15 Q. And how old are you?

16 A. Forty-five.

17 Q. Your date of birth?

18 A. 9/23/1957.

19 Q. And can you give me your educational  
20 background, in just kind of a time line basis. Did you  
21 graduate high school?

22 A. No.

23 Q. Okay. Where did you go to high school?

24 A. Connersville, Indiana.

25 Q. And how far did you get through high

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1 school before you left?

2 A. Mid-semester of my senior year.

3 Q. Okay. Why did you leave at that time?

4 A. Due to a financial hardship on my

5 family.

6 Q. Okay. And you don't have a diploma or a  
7 GED certificate or anything like that?

8 A. No.

9 Q. Okay. I assume you started working at  
10 that time; is that correct?

11 A. That's correct.

12 Q. Okay. Let's try to do kind of a  
13 chronology of your employment history. Again, I'd like to  
14 go from the distant past into the more recent time frame.  
15 So, once you left high school, just tell me where you  
16 worked, and kind of do it with bracketing the years, if you  
17 can, where you were at a particular job and who you worked  
18 for.

19 A. I worked for a factory in Connersville.

20 Q. What year would that have been then,  
21 when you left high school?

22 A. That would have been approximately 1977,  
23 I believe.

24 Q. Okay. All right.

25 A. I worked there for approximately six

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1 years.

2 Q. What did you do?

3 A. I worked in the shipping department,  
4 just a common laborer.

5 Q. All right. Where did you work after  
6 that?

7 A. I worked for the utilities department.

8 Q. The State of Indiana?

9 A. It was the City of Connersville  
10 utilities.

11 Q. Okay. From when to when?

12 A. That would have been approximately, I  
13 think, 1983, 1984, until 1986.

14 Q. Okay. What type of work did you do  
15 there?

16 A. Just labor.

17 Q. Okay. What was your next job?

18 A. Used car salesperson at Tri-County AMC  
19 Jeep.

20 Q. And for what period of time did you have  
21 that position?

22 A. Approximately 19 -- just for few months.  
23 I think it was right at 1987.

24 Q. And where did you work after that?

25 A. Glenway Chevrolet.



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1 Q. Were you again in a sales position?  
2 A. That's correct.  
3 Q. How long did you have that job?  
4 A. Approximately one year.  
5 Q. So roughly 1988?  
6 A. That's correct.  
7 Q. And after that?  
8 A. Montgomery AMC Jeep.  
9 Q. At the Glenway Chev, were you selling  
10 new and used?  
11 A. Yes.  
12 Q. And how long did you work at Montgomery  
13 AMC Jeep?  
14 A. Approximately six months.  
15 And then Kings Dodge.  
16 Q. Were you also in a sales position at  
17 Montgomery AMC?  
18 A. Used car manager.  
19 Q. And then you went to Kings Dodge. And  
20 when did you start there?  
21 A. That was also in '88, approximately  
22 July.  
23 Q. Okay. What position did you have at  
24 Kings?  
25 A. Used car manager.

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1 Q. How long did you hold that position?  
2 A. Until approximately 1994.  
3 Q. What did you do then?  
4 A. I became new car manager at the same  
5 place.  
6 Q. And what did you do after that?  
7 A. Went to Northgate Lincoln Mercury,  
8 January of '96, as general manager.  
9 Q. And that's the position you currently  
10 hold?  
11 A. Yes.  
12 Q. Who owned Kings Dodge?  
13 A. Robert Reichert.  
14 Q. Was that the first dealership where you  
15 were working for Mr. Reichert?  
16 A. No, Montgomery Jeep.  
17 Q. Montgomery Jeep, okay.  
18 What are your duties as General Manager  
19 of Northgate Lincoln Mercury?  
20 A. Manage the daily operations of the  
21 dealership.  
22 Q. Do you report to Mr. Reichert?  
23 A. Yes.  
24 Q. Who reports to you?  
25 A. The new car manager, used car manager,

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1 parts manager, service manager, and office manager.

2 Q. About how frequently do you have contact  
3 with Mr. Reichert, on a weekly basis?

4 A. At least once a week.

5 Q. Usually on the phone?

6 A. We have a meeting on Mondays.

7 Q. And what's covered in those meetings, as  
8 a rule?

9 A. Just general business, week to week.

10 Q. And he comes to your dealership for that  
11 purpose?

12 A. No, I go to his.

13 Q. Okay. And where is that?

14 A. Kings Toyota.

15 Q. Do you have any training or -- well, any  
16 training in the automobile industry?

17 A. I've had training.

18 Q. Tell me about that.

19 A. When I was with Dodge, I had a used car  
20 management seminar.

21 Q. How long was that seminar?

22 A. Approximately three days, to the best of  
23 my recollection.

24 Q. Any other training programs that you've  
25 been through?

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1 A. Not that I recall.

2 Q. Anything ever sponsored by Ford Motor

3 Company?

4 A. In terms of training?

5 Q. Yes, sir.

6 A. They have a Ford Star System, which is  
7 essentially via satellite, that you can view training.

8 Q. And from time to time do you tune in on  
9 some of those broadcasts?

10 A. I have, I have.

11 Q. Do you decide when and where to do that,  
12 or is there some formal process by which you know that you  
13 need to have so much time devoted to that during the year?

14 A. No, I decide that.

15 Q. What subjects have been covered in those  
16 programs that you can remember viewing?

17 A. New model introduction, features,  
18 benefits.

19 Q. Have you had any training with respect  
20 to dealer operations?

21 A. No.

22 Q. Would it be fair to state then, that  
23 your knowledge and expertise in that area has been  
24 on-the-job acquired?

25 A. Yes.

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1 Q. Prior to your deposition today,  
2 Mr. Mullins, did you do anything to prepare?

3 A. I spoke with my attorney.

4 Q. Okay. Would that be Mr. Hengehold?

5 A. That's correct.

6 Q. He's Mr. Reichert's attorney?

7 A. (Nodding affirmatively).

8 Q. Right?

9 A. Yes.

10 Q. Okay. Did you review any papers, any  
11 documents of any kind?

12 A. No.

13 Q. Did you speak with Mr. Reichert at any  
14 time before you gave your deposition today, about any issues  
15 in the case?

16 A. When I spoke with him, Mr. Hengehold was  
17 there.

18 Q. Okay. So you were all together at the  
19 same time?

20 A. Yes.

21 Q. And that was one time only, earlier  
22 today?

23 A. It was prior to today, yes, but it was  
24 one time only.

25 Q. Was it Friday?

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1 A. Yes.

2 Q. Okay. How long was that meeting?

3 A. An hour, possibly.

4 Q. Okay. Was it down here?

5 A. No.

6 MR. HENGHOLD: We deliver.

7 Q. What do you know about the acquisition

8 of Northgate Lincoln Mercury by Mr. Reichert?

9 A. Nothing.

10 Q. Okay. Do you know how long Mr. Reichert  
11 had owned the dealership before you came on board as the  
12 general manager?

13 A. Approximately three years.

14 Q. Who held the position as general manager  
15 before you?

16 A. Larry Feldhaus.

17 Q. Do you know, generally, why he left the  
18 position?

19 A. To my knowledge, there was an opening at  
20 one of our other stores that he transferred to.

21 Q. Okay. And that would be the Kings  
22 store?

23 A. That's correct.

24 Q. Do you have any ownership interest in  
25 any of the franchises operated by the Kenwood Dealer Group?

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1 A. No.

2 Q. Have you ever?

3 A. No.

4 Q. Are you familiar with any plans or

5 discussions involving Mr. Reichert and the idea of him

6 acquiring other Lincoln Mercury franchises?

7 A. I can't answer that the way it's posed.

8 I don't understand the question.

9 Q. Have you ever been made aware of any

10 interest on Mr. Reichert's behalf in purchasing other

11 franchises?

12 A. No.

13 Q. Are you aware of any involvement

14 Mr. Reichert has had to investigate the purchase of Eastside

15 Lincoln Mercury?

16 A. No.

17 Q. Were you aware of Mr. Reichert's efforts

18 to acquire Fairfield Lincoln Mercury?

19 A. I became aware of it.

20 Q. How did you become aware of it?

21 A. Just in conversation with him.

22 Q. Do you know of any of the particulars of

23 how that deal came together?

24 A. No.

25 Q. Are you familiar with the term

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1 "consolidator agreement?"

2 A. No.

3 Q. Are you familiar with whether

4 Mr. Reichert and Ford Motor Company, Lincoln Mercury

5 Division, has an agreement, or have an agreement, whereby

6 Mr. Reichert and the Kenwood Dealer Group is considered a

7 consolidator for the Lincoln Mercury Division in this

8 market?

9 A. I have no knowledge of that.

10 Q. Do you know whether the Kenwood Dealer

11 Group has a status with Ford Motor Company because of the

12 fact that it owns three dealerships, special considerations

13 that come from that fact?

14 A. None that I'm aware of.

15 Q. Do you know if there were ever any

16 incentives made available to your dealership, be they sales

17 incentives, advertising, marketing, anything like that, that

18 were made available to your dealership because Mr. Reichert

19 has three Lincoln Mercury dealerships?

20 A. I wouldn't know that.

21 Q. Do you have responsibilities in your job

22 for advertising?

23 A. Yes.

24 Q. Do you have interaction with

25 representatives of the Lincoln Mercury Division here in the



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1 region in connection with advertising?

2 A. Yes.

3 Q. Who do you interact with?

4 A. My zone manager.

5 Q. Who is that?

6 A. Pat LeTarte.

7 Q. Anyone else?

8 A. I've had brief discussions with my  
9 regional manager, Steve Carnegie.

10 Q. Okay. And before Mr. Carnegie was in  
11 his position, that would have been Jerry Carter?

12 A. That's correct.

13 Q. And do you have, or did you have, any  
14 discussions with Mr. Carter while he was here in the  
15 Cincinnati region?

16 A. I have had, yes.

17 Q. And what subjects would those have been  
18 on?

19 A. I can't recall, specifically. However,  
20 just in general, maybe a certain model or something that  
21 would be a slow mover, that maybe we should advertise that a  
22 little heavier, possibly.

23 Q. And did you ever ask Mr. Carter to help  
24 you with vehicle allocation issues?

25 A. I didn't discuss vehicle allocation with

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1 Mr. Carter.

2 Q. Never?

3 A. I can't say never, but I don't recall.

4 Q. Okay. Ordinarily, you would take those  
5 concerns to Mr. LeTarte; is that right?

6 A. That's correct.

7 Q. Would you have a monthly meeting with  
8 him where you would figure out your request and you would  
9 figure out your allocations, right?

10 A. That's correct.

11 Q. Do you know if Mr. Carter ever had  
12 access to a supply of vehicles outside of the classic  
13 allocation process, a pool of vehicles that he had control  
14 over?

15 A. Not to my knowledge.

16 Q. Have you ever heard the term "regional  
17 manager's pool?"

18 A. No.

19 Q. Did you ever hear of Mr. Carter helping  
20 dealers get vehicles that couldn't be obtained through the  
21 allocation process, or weren't obtained fast enough?

22 A. No.

23 Q. Did you ever have difficulty getting  
24 allocation of vehicles or a shipment of vehicles at the time  
25 of a new vehicle rollout?

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1 A. Not out of the ordinary.

2 Q. What would the ordinary be?

3 A. Typically, with new vehicles, there's  
4 problems, quality problems and things that can slow down the  
5 allocation.

6 Q. So that potential is there whenever a  
7 new vehicle is launched; is that right?

8 A. From my experience.

9 Q. Did you have difficulty getting Lincoln  
10 Navigators when they were rolled out in '98? It may have  
11 been late '97, but they were model year '98 cars.

12 A. I don't recall having difficulty with  
13 that particular model.

14 Q. Or any other particular model?

15 A. No, I don't.

16 Q. Okay. Do you know if either of your  
17 counterparts at the Kenwood Dealer Group's other two Lincoln  
18 Mercury dealerships had any particular problems with vehicle  
19 allocation issues at rollout?

20 A. I wouldn't know that.

21 Q. Well, you communicate from time to time  
22 with Mr. Feldhaus, don't you?

23 A. We do, but we're still separate. I  
24 mean, what my market would be is certainly different than  
25 his.

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1 Q. Okay. When there is a new model that's  
2 rolled out, during your tenure with any of the dealerships  
3 that Kenwood Lincoln Mercury owned, was there ever a time  
4 when you didn't get a single vehicle at rollout?

5 A. I don't recall.

6 Q. So that could have happened, but you  
7 just don't remember; is that right?

8 A. That could have happened, but it's not  
9 uncommon for a dealership to get a car, the first car, and  
10 three days later another dealership gets their car. Very  
11 seldom have I ever seen where they all come at once.

12 Q. Okay. But with respect to Northgate,  
13 you don't remember any new vehicle rollout situation where  
14 you didn't get any cars?

15 A. I don't recall that.

16 Q. Okay. Where you ever at a meeting at  
17 the Wetherington Country Club with Jerry Carter and the  
18 other general managers for the Kenwood Dealer Group Lincoln  
19 Mercury dealers?

20 A. Yes.

21 Q. And when did that take place, if you can  
22 recall?

23 A. I would say approximately spring of  
24 2000, maybe.

25 Q. What type of business was discussed? I

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1 understand there was a dinner, but what type of business  
2 issues were discussed there?

3 A. Market conditions.

4 Q. What else?

5 A. Aged inventory, prior year models.

6 Q. And was it presented to Mr. Carter that  
7 your dealerships had some aged inventory that you needed to  
8 turn?

9 A. As I recall, yes.

10 Q. Did he offer some financial assistance  
11 to help you do that?

12 A. He did.

13 Q. How much?

14 A. I think \$10,000.

15 Q. Do you know where that money came from?

16 A. I do not know.

17 Q. Do you know who the money was paid to?

18 A. As I recall, it was paid for -- on  
19 models, Mountaineer models, and it was paid per dealership,  
20 to try to reduce the prior year models, as best of my  
21 recollection.

22 Q. Do you remember how much of that \$10,000  
23 came to Northgate?

24 A. No, I don't.

25 Q. Do you recall any other situations over

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1 your tenure where you, or somebody on behalf of Kenwood  
2 Dealer Group, went to Mr. Carter and said we need some money  
3 to accomplish something at our dealerships?

4 A. No, I do not.

5 Q. On that \$10,000, was there anything that  
6 Mr. Carter asked of your dealerships before you could  
7 receive it, any strings attached?

8 A. Not that I recall.

9 Q. Is it your recollection that the \$10,000  
10 was ultimately paid into the Kenwood Dealer Group?

11 A. It was.

12 Q. Have you been made aware of any  
13 discussions between Mr. Reichert and Jerry Carter about  
14 Mr. Reichert acquiring other dealerships?

15 A. No.

16 Q. If I asked you this already, I  
17 apologize. I just don't remember.

18 Are you aware of whether Mr. Reichert  
19 has ever had an interest or expressed an interest in  
20 purchasing Eastside Lincoln Mercury?

21 A. No, I'm not aware.

22 Q. Or working out some series of  
23 transactions which would result in him acquiring Eastside  
24 Lincoln Mercury?

25 A. Nothing that I have knowledge to.

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1 (THEREUPON, A SHORT RECESS WAS TAKEN).

2 BY MR. FLEMER:

3 Q. Given your experience in the car  
4 business here in the greater Cincinnati area, are you aware,  
5 generally, of what the reputation in the car community is  
6 with respect to Eastside Lincoln Mercury? What kind of  
7 reputation do they have, as far as you know?

8 A. I wouldn't have any idea.

9 Q. Do you know whether they're  
10 characterized as a dealer that has high consumer  
11 satisfaction?

12 A. I have no knowledge of that. I don't  
13 know.

14 Q. Okay. Well, sometimes -- I would assume  
15 that you would at least see publications where consumer  
16 service-type issues reflect awards or recognition. Do you  
17 know that Eastside has received anything like that?

18 A. No, I do not.

19 Q. Do you know if they have a reputation as  
20 a high volume dealer or a moderate volume dealer or a low  
21 volume dealer?

22 A. I don't know.

23 Q. If someone were to characterize them as  
24 a low volume dealer, would you believe that to be true, or  
25 would you not know?

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1 A. They sell more than I do.

2 Q. Excuse me?

3 A. They sell more cars than I do.

4 Q. So you wouldn't call them --

5 A. That's the only way I'll characterize  
6 it, they outsell me.

7 Q. Fair enough.

8 And they have for the last five years,  
9 as far as you can recall, or seven years maybe?

10 A. Well, they did a good job last month,  
11 too.

12 Q. All right. You don't know of anything  
13 in particular that has been made known to you about Eastside  
14 Lincoln Mercury's reputation which would be negative; is  
15 that fair?

16 A. I have no knowledge of anything like  
17 that.

18 Q. Okay. Were you aware, Mr. Mullins, that  
19 sometime in 1999, an internal Ford memorandum was circulated  
20 that presented a growth strategy from Ford's standpoint?  
21 Did you ever hear anything about that?

22 A. I can't recall.

23 Q. You've never seen a memo that presented  
24 a growth strategy by Ford, have you?

25 A. I may have, but I don't recall.



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1 Q. Okay. Have you ever seen a Ford  
2 business plan?  
3 A. Can you be more specific?  
4 Q. Yeah.  
5 Have you ever seen a document that  
6 presented issues that might be characterized as a business  
7 plan for this market that Ford would have produced?  
8 A. I reviewed my own business plan.  
9 Q. Right.  
10 You make up your own?  
11 A. Yes.  
12 Q. Prepare your own, I should say?  
13 A. That's correct.  
14 Q. Okay. Have you ever seen one prepared  
15 by Ford?  
16 A. I don't recall.  
17 Q. Other than the \$10,000 that was made  
18 available after your dinner with Mr. Carter at Wetherington,  
19 for the purposes you've described, do you know of any other  
20 programs like that which resulted in any of the Kenwood  
21 Dealer Group dealerships, or the group as a whole, receiving  
22 additional monies or advertising or financial support from  
23 the region?  
24 A. I do not.  
25 Q. On an ask-and-see-if-we-can-get-it

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1 basis?

2 A. Every meeting that we always had, we

3 asked.

4 Q. Okay.

5 A. And I'm speaking in terms of all Lincoln  
6 Mercury dealers. We always asked, asked for everything, and  
7 take what we can get.

8 Q. Okay. But is that meeting that you had  
9 and received \$10,000 for aged inventory the only time where  
10 you ever got something special?

11 A. As I recall.

12 Q. Okay. Have you ever been involved in  
13 the Ford warranty audit process?

14 A. No, I have not.

15 Q. Or the warranty review process?

16 A. No.

17 Q. Has your dealership ever been involved  
18 in it?

19 A. No.

20 (THEREUPON, AN OFF-THE-RECORD DISCUSSION  
21 WAS HELD).

22 BY MR. FLEMER:

23 Q. Were you involved with Northgate Lincoln  
24 Mercury's certification as an LPE dealership?

25 A. Yes.

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1 Q. When did that take place?  
2 A. Approximately two years ago.  
3 Q. Were you the point man for the project?  
4 A. Yes.  
5 Q. Did you pass on the first time?  
6 A. Yes.  
7 Q. Are you aware if any of Mr. Reichert's  
8 dealerships did not?  
9 A. Yes.  
10 Q. Tell me what you know about that.  
11 A. Fairfield Lincoln Mercury did not.  
12 Q. Why not?  
13 A. I'm not aware of that. I just heard  
14 hearsay that they did not pass.  
15 Q. Would you have heard that from  
16 Mr. Huser, or Houser (sic)? How does he say that?  
17 A. Huser.  
18 Q. Huser.  
19 Is that where your information came  
20 from?  
21 A. Yes.  
22 Q. But you don't know anything about the  
23 details of why he didn't?  
24 A. No.  
25 Q. Do you know anything about what he did

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1 to try to pass it the next time through?

2 A. No, I don't.

3 Q. Were you present at a meeting where  
4 Mr. Huser requested that there be a waiver of the  
5 requirement to have paperwork reflected in the Stars  
6 program?

7 A. I don't recall that.

8 Q. Do you know what the Stars program is?

9 A. I know, yes, I know what Stars is.

10 Q. What is that?

11 A. Stars is an enrollment process for  
12 dealership employees, as I understand it.

13 Q. And it reflects a certain level of  
14 training on their part, or competency, I guess?

15 A. Well, I don't know about that.

16 Q. Okay.

17 A. I mean, it will measure training and  
18 collect the training. You can see certification processes  
19 per salespeople and different employees.

20 Q. Okay. And was that a prerequisite to  
21 get into the LPE program, that a certain number of employees  
22 have that certification?

23 A. Yes, as I recall.

24 Q. Okay. And do you know whether Mr. Huser  
25 had problems in that area when he was trying to get

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1 certified?

2 A. I had my own problems, I don't know

3 about his.

4 Q. You had your problems with the Stars

5 program?

6 A. No. I had the same procedures that all  
7 other dealers had, so I'm concentrating on passing myself.

8 Q. I see.

9 Are you familiar with Mr. Reichert's  
10 efforts to receive Ford's approval to dual at your store  
11 with Volkswagen?

12 A. No, sir.

13 Q. Are you familiar with anybody else's  
14 efforts to obtain approval to dual one of Mr. Reichert's  
15 dealerships with Volkswagen?

16 A. No.

17 Q. Do you understand that Mr. Reichert has  
18 the privilege and, in fact, is operating a dual dealership  
19 at Fairfield Lincoln Mercury and Volkswagen?

20 A. I assume that.

21 Q. But you don't know how that came to be?

22 A. No.

23 Q. Have you ever investigated doing that at  
24 your dealership?

25 A. No.

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1 Q. Has Mr. Reichert?

2 A. I have no knowledge of that.

3 Q. Do you have another brand of vehicles  
4 sold at Northgate Lincoln Mercury now?

5 A. Volkswagen.

6 Q. And was that arrangement in place when  
7 you got there?

8 A. Yes.

9 Q. And you don't know how it came to be in  
10 place; is that right?

11 A. That's correct, I do not know.

12 Q. Is it your opinion, as the general  
13 manager out there, that that relationship, the dualing  
14 relationship, is beneficial? Does it help you sell cars and  
15 make money?

16 A. It doesn't help me sell Lincoln Mercury.

17 Q. Well, is it detrimental to selling  
18 Lincoln Mercury?

19 A. I wouldn't say that.

20 Q. Well, I'm asking you to say whether it  
21 is or it isn't.

22 A. Then, based on that, I don't know.

23 MR. FLEMER: Okay. Let's go off the  
24 record for a minute.

25 (THEREUPON, A SHORT RECESS WAS TAKEN).

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1 BY MR. FLEMER:

2 Q. You've worked at dealerships, prior to  
3 coming on board at Northgate, where there has not been a  
4 dual relationship, right?

5 A. Correct.

6 Q. And obviously you've had seven years of  
7 experience, six-years-plus experience, where there has been  
8 a dualing, right?

9 A. That's correct.

10 Q. Is it your experience that dualing helps  
11 make your dealership more profitable than ones that didn't  
12 have it?

13 A. I can't answer that question like that.

14 Q. Well, if I changed it -- I mean, what's  
15 the part of the question that makes it impossible to answer  
16 it?

17 A. Well, the only really lengthy time I've  
18 worked at a dealership to compare that to would be Dodge.

19 Q. Okay.

20 A. Otherwise, I couldn't -- I can't answer  
21 your question, because I don't have knowledge of that.

22 Q. Okay.

23 A. The Dodge product was, at the time I  
24 worked there, was a good selling product. I can't imagine  
25 having another dealership with it that could make it any

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1 better. I mean --

2 Q. Well, let's just talk about the dual  
3 that you have now, Lincoln Mercury and Volkswagen. Okay?

4 A. Uh-huh.

5 Q. Do you see any benefits to that  
6 arrangement, for either brand, or for the entity that owns  
7 the franchise rights to sell each car? I mean, you've got  
8 Kenwood Dealer Group, they went to get permission and  
9 received it, to dual, and is there any benefit to that?

10 A. We sell more Volkswagens than we have in  
11 the past.

12 Q. To what do you attribute that increased  
13 Volkswagen sales volume?

14 A. Hard work.

15 Q. Well what about the dualing arrangement?

16 A. I don't see any benefit of the dualing  
17 arrangement that sells more Volkswagens or more Lincoln  
18 Mercurys.

19 Q. Do you see any cost savings?

20 A. I see no cost savings. There's  
21 actually -- it's not as cost effective. I have to have more  
22 managers, more service personnel, more equipment.

23 Q. Well, aren't there some shared  
24 resources?

25 A. There can be, but not in equipment, not



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1 in terms of equipment. They're not compatible.

2 Q. Okay. Aren't there shared facility  
3 resources?

4 A. There are.

5 Q. And that could represent some cost  
6 savings to the dealer group, couldn't it?

7 A. It could.

8 Q. And how about sharing in terms of  
9 advertising?

10 A. We advertise separately.

11 Q. Okay. So you don't know of any other  
12 benefits that would be associated with the privilege of  
13 dualing, apart from what you told me, that there might be  
14 some facility savings that you had?

15 A. No.

16 Q. Do you know of any other benefits that  
17 would relate to your fixed operations or your ability to  
18 repair cars?

19 A. No. I mean, there, Volkswagen's tools  
20 and requirements, all that differs greatly from Lincoln  
21 Mercury, therefore the expense is much greater. We have two  
22 of the same for each product, in most cases.

23 Q. Would it be your preference, then, not  
24 to dual? Do you think your dealership would be more  
25 profitable without the dual?

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1 A. I couldn't answer that.

2 Q. Well, perhaps you've never studied it,  
3 but you're telling me that you really don't see any benefits  
4 to it, and you've listed a number of expenses or detriments  
5 that make it more costly and less cost-effective, I think  
6 that was your term. Would you prefer that you not have a  
7 dual with Volkswagen?

8 A. I wouldn't say that.

9 Q. Well, you have no opinion on the  
10 subject?

11 A. I guess I do not.

12 Q. What do you think if Volkswagen was no  
13 longer a part of your dealership, just say that came to  
14 pass, --

15 A. Uh-huh.

16 Q. -- what would change up at Northgate  
17 Lincoln Mercury, in terms of their financial picture? Do  
18 you think it would be better without it, either in terms of  
19 increased sales or lower expenses or some combination of  
20 that?

21 A. Well, I would change my business  
22 strategy.

23 Q. How would you do that?

24 A. I would try to increase my Lincoln  
25 Mercury inventory some, probably 10 percent, and put

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1 emphasis on used cars.

2 Q. Would that be your strategy for trying  
3 to make up the lost Volkswagen sales?

4 A. I don't know if I -- I wouldn't term it  
5 as lost. I would just term it as what I would do with the  
6 additional space that would be there and how I would make up  
7 the inventory loss.

8 Q. How would you increase used car sales?

9 A. Larger inventory.

10 Q. So you would have more physical space on  
11 the lot to park some cars, which is now taken up by  
12 Volkswagens?

13 A. That's correct.

14 Q. Are you aware of any situations where  
15 your dealership has sold a Lincoln Mercury product to a  
16 customer that was previously turned down at another Lincoln  
17 Mercury dealer?

18 A. I'm not aware of that.

19 Q. Do you believe that happens from time to  
20 time, that customers get turned down at one dealership and  
21 then go down the road to the next one?

22 A. Yes.

23 Q. I assume your new car manager would know  
24 about those circumstances from time to time?

25 A. Yes, but not related just to Lincoln

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1 Mercury.

2 Q. Okay. Have you ever had any discussions  
3 with Mr. Bill Woeste?

4 A. Casual.

5 Q. Here today, made his acquaintance, or --

6 A. I think we were on a trip one time,  
7 maybe, if I recall.

8 Q. Have you ever talked business issues  
9 with him?

10 A. Not that I recall.

11 Q. Or anybody from any of the dealerships  
12 that he owns?

13 A. No.

14 Q. Are you aware of any circumstances where  
15 Kenwood Dealer Group dealerships received any incentives or  
16 benefits from Ford that weren't made available equally to  
17 other dealerships?

18 A. Not to my knowledge.

19 Q. In connection with your sales of  
20 Volkswagens, do you know if Volkswagen is permitted to do  
21 that, to offer programs or benefits to specific dealers but  
22 not make that same program or benefit available to other  
23 dealers in their markets?

24 A. I don't know that.

25 Q. Have you ever heard of that happening?

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1 A. I have not through Volkswagen.

2 Q. Or any dealership, just from the  
3 knowledge that you may have acquired over the years?

4 A. No.

5 MR. FLEMER: Let's go off the record for  
6 a second.

7 (THEREUPON, A SHORT RECESS WAS TAKEN).

8 BY MR. FLEMER:

9 Q. Do you recall receiving some co-op money  
10 from Ford in the spring of 2000, approximately \$21,000?

11 A. No, I don't.

12 Q. A co-op program of some type, you don't?

13 A. No.

14 Q. Would that sum of money, that figure, be  
15 considered a large check to receive on one co-op program?

16 A. To my knowledge, Ford does not  
17 have co-op. I don't understand your question in terms of  
18 co-op. I don't recall receiving 21,000 in any fashion, but  
19 I don't understand co-op.

20 Q. Well, just generally, when I use the  
21 term, I'm referring to a process whereby Ford will match a  
22 dealer with dollars for advertising, that they would match  
23 on a dollar-for-dollar basis, and they would call that  
24 co-op.

25 A. Okay. Ford does not have that program,

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1 that I'm aware of.

2 MR. HENGHELD: I hate to pipe up. I  
3 try never to do this, but you started out the previous  
4 deposition by making Ford equal Lincoln Mercury.

5 MR. FLEMER: Right.

6 MR. HENGHELD: You didn't do that in  
7 this deposition.

8 MR. FLEMER: Okay.

9 MR. HENGHELD: This man sells Lincoln  
10 Mercurys. That may be the problem.

11 MR. FLEMER: Okay.

12 BY MR. FLEMER:

13 Q. Well, let me do this: Let me ask you to  
14 understand, for the purposes of my questions, if I've used  
15 the term Ford, I meant to include the Lincoln Mercury  
16 Division within that. I guess I didn't say that earlier, as  
17 Mr. Hengehold has just pointed out. But in this pending  
18 question about co-op, I'd like you to understand that when I  
19 said Ford, I meant the Lincoln Mercury Division of Ford  
20 Motor Company. Would that change your answer?

21 A. No.

22 Q. You don't understand that Lincoln  
23 Mercury has a co-op program where they match funds for  
24 advertising with what the dealer will put up?

25 A. I'm not aware of that.

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1 Q. Well, are you aware that your dealership  
2 puts up money for advertising?

3 A. Yes.

4 Q. Okay. And are you aware that Ford  
5 sometimes contributes to advertising programs?

6 A. The LMDA does.

7 Q. Okay, all right. Do you know whether,  
8 through the LMDA or elsewhere, that their money comes from  
9 the Lincoln Mercury Division?

10 MR. BERBERICH: Let's take a break for a  
11 second.

12 MR. FLEMER: We'll come back to this.  
13 (THEREUPON, A SHORT RECESS WAS TAKEN).

14 BY MR. FLEMER:

15 Q. Mr. Mullins, if I understand your  
16 testimony, you're aware that there are co-op funds that are  
17 made available to Kenwood Dealer Group dealerships, Lincoln  
18 Mercury dealerships, through the LMDA process, right?

19 A. Yes.

20 Q. And is that the only process by which  
21 you know that co-op advertising funds are available to your  
22 dealerships?

23 A. Yes.

24 Q. Okay. You don't know of some other  
25 source where other advertising monies are made available,

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1 outside the LMDA?

2 A. Not that I have knowledge of.

3 Q. Okay. Now, are you aware of any  
4 instances where monies available through the LMDA have been  
5 made available to the Kenwood Dealer Group dealerships and  
6 not other dealerships in the Cincinnati market?

7 A. No.

8 Q. Or any other benefits that they might  
9 have, rebates or other incentives, any financial benefit?

10 A. No.

11 Q. Have you ever heard of the regional  
12 manager's discretionary fund, --

13 A. No.

14 Q. -- Lincoln Mercury Regional Managers?  
15 You've never heard of that term?

16 A. No.

17 Q. Are you aware of any other sources of  
18 funds for advertising, besides the LMDA funds, that  
19 Ford makes available?

20 A. Not that I'm aware of.

21 Q. And are you aware of any type of  
22 financial assistance available outside the LMDA umbrella, so  
23 to speak?

24 A. Not that I'm aware of.

25 Q. Were you part of a meeting or a



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1 discussion where all three of the Reichert Lincoln Mercury  
2 dealerships met to discuss the possibility of aggregating  
3 your sales to get better allocation or more allocation?

4 A. I recall being in a meeting, but I don't  
5 recall the contents of that meeting.

6 Q. Well, did it have something to do with  
7 aggregating sales and vehicle allocation issues? Something  
8 must have struck a nerve here, so that you can recall  
9 something.

10 A. Well, quite frankly, I wondered why I  
11 was at the meeting. I had -- you know, I wasn't part of it.  
12 I was just there, and I don't recall any of the  
13 conversation. I don't recall participating in any of the  
14 conversation.

15 Q. When was this meeting that you're  
16 referring to?

17 A. I would have to guess, maybe three years  
18 ago. I don't -- I have no recollection of the date.

19 Q. Was allocation discussed there, vehicle  
20 allocation?

21 A. I can't recall.

22 Q. Who was present?

23 A. Bob Reichert, Jerry Carter --

24 Q. Was it unusual for you to be at a  
25 meeting with those folks there?

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1 A. I felt so, yeah. I don't --  
2 Q. And you don't know why you were there?  
3 A. Yes.  
4 Q. Who else was there? I interrupted you.  
5 A. I don't -- there was maybe two or three  
6 others. I don't recall who was there.  
7 Q. Were other GM's there? Were your  
8 counterparts from the other dealerships there?  
9 A. I'm sorry, I can't recall.  
10 Q. Where was the meeting?  
11 A. At the Marriott.  
12 Q. Was this a grassroots meeting or was it  
13 a -- do you know what a grassroots meeting is?  
14 A. Yes.  
15 Q. Was it one of those?  
16 A. I don't recall.  
17 Q. Do you remember any of the topics  
18 discussed?  
19 A. None whatsoever.  
20 Q. I'm not trying to be argumentative with  
21 you, I'm just trying to probe your memory here. But I  
22 started out by asking whether you were aware of any  
23 discussions where the subject of allocation and aggregating  
24 your sales was discussed, and I think that's what led you  
25 into this recollection, dim as it may be. So does that help

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1 you recall anything specific?

2 A. No, sir, I don't recall any of the  
3 conversation of that meeting.

4 Q. You were trying to remember who else was  
5 present. Was Pat LeTarte there?

6 A. I can't recall.

7 Q. Or anybody at a zone level there?

8 A. I told you who I can remember was there.

9 Q. Okay. Were there representatives of  
10 other Lincoln Mercury dealerships there, or was it just the  
11 Kenwood Group?

12 A. I don't recall.

13 Q. Allowing that you might not recall  
14 specific names, I just wonder if you recall people with, you  
15 know, other jerseys on, so to speak?

16 A. Not that I can recall.

17 Q. Okay. Are you aware of Mr. Reichert  
18 ever having concerns with regard to Mr. Carter's handling of  
19 his request to dual at the Fairfield store?

20 A. I have no -- I'm not privy of that. I  
21 have no knowledge of that.

22 Q. Did you ever hear that Mr. Reichert was  
23 contemplating suing Mr. Carter?

24 A. No.

25 Q. Or that he threatened to do so, or

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1 thought he might have to?

2 A. No.

3 MR. FLEMER: Mr. Mullins, thank you.

4 That's all we have. Thanks for being down here and spending  
5 part of your day with us.

6

7 (JERRY L. MULLINS)

8 (DEPOSITION CONCLUDED)

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1 C E R T I F I C A T E  
2 STATE OF OHIO )  
 ) SS  
3 COUNTY OF HAMILTON )

4 I, Jill M. Dragon Sandy, the undersigned, a duly  
5 qualified and commissioned notary public within and for the  
6 State of Ohio, do hereby certify that before the giving of  
7 his aforesaid deposition the said JERRY L. MULLINS, was by  
8 me first duly sworn to depose the truth, the whole truth,  
9 and nothing but the truth; that the foregoing is the  
10 deposition given at said time and place by the said JERRY L.  
11 MULLINS; that said deposition was taken in all respects  
12 pursuant to agreement as to time and place, that said  
13 deposition was taken by me in stenotypy and I am neither a  
14 relative of, nor attorney for, any of the parties to this  
15 cause, nor relative of nor employee of any of their counsel,  
16 and have no interest whatever in the result of the action.  
17 IN WITNESS WHEREOF, I hereunto set my hand and official  
18 seal of office, Cincinnati, Ohio this \_\_\_\_\_ day  
19 of \_\_\_\_\_, 2003.  
20  
21

\_\_\_\_\_  
Jill M. Dragon Sandy-Notary Public  
My commission expires: January 31, 2005.

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